

REMARKS***Status Of The Claims***

Claims 1-20, 23, 26-30, 32-65, 67-76 and 78-104 are pending in this application. Of the above claims 6-19, 38, 41, 44-53, 57 and 58 have been withdrawn from consideration. Claims 91, 95 and 98-103 are allowed. By virtue of this amendment, claims 1, 3, 20, 32, 35, 39, 73, 78, 96, and 104 have been amended, new claims 105-124 have been added, and claim 53 has been canceled.

The Office Action Summary states that claims 1-5, 20, 23, 26-30, 32-37, 39, 40, 42, 43, 54-56, 59-65, 67-76, 78-90, 92-94, 96 and 97 are rejected. However, claims 84-87 are not listed as being the subject of any of the rejections set forth in the Office Action. Applicants would appreciate the Examiner clarifying the status of these claims.

The amendments to claims 1, 3, 20, 35, 39, and 73 are supported, for example, on page 14, lines 6-11 and on 18, lines 13-15, of the specification. The amendments to claims 32, 78, and 96 were made to change dependencies from canceled to non-canceled claims. The amendment to claim 104 was made to convert the claim from dependent to independent form. New claims 105-110 are supported, for example, on page 7, lines 12-15, and on page 71, lines 10-17. New claims 111-114 are supported, for example, on page 7, lines 16-18, on page 71, lines 10-17, and on page 88, lines 22-24, of the specification. New claims 115-118 are supported, for example, on page 7, lines 19-22 and on page 71, lines 10-17, of the specification. New claims 119-124 are supported, for example, on page 7, lines 23-26, on page 71, lines 10-17, and on page 86, lines 16-22, of the specification. No new matter has been added by the foregoing amendments.

With respect to all amendments and canceled claims, Applicants have not dedicated to the public or abandoned any unclaimed subject matter and moreover have not acquiesced to any rejections and/or objections made by the Patent Office. Applicants expressly reserve the right to pursue prosecution of any presently excluded subject matter or claim embodiments in one or more future continuation and/or divisional applications.

Supplemental information disclosure statement

Applicants are filing a Supplemental Information Disclosure Statement herewith. Applicants would appreciate the Examiner initialing and returning the attached Form PTO-1449, indicating that the references therein have been considered and made of record in this case.

Rejoinder of method claims

Applicants acknowledge with appreciation the Examiner's statement that withdrawn process claims that depend from or otherwise include all the limitations of product claims that are currently under examination will be rejoined and examined for patentability in accordance with 37 C.F.R. §1.104 upon allowance of the product claims.

Sequence disclosure compliance

The Office Action states that claim 79 presently recites an amino acid sequence which is not properly identified by a sequence identification number. Claim 79 was amended to identify the sequence recited therein with the sequence identifier SEQ ID NO:35 in a response filed on June 21, 2002. Due to an inadvertent clerical error, this amendment was not reflected in the claims listing included with the Office Action response filed on August 11, 2003 (paper no. 39). This error has been corrected in claim 79 as listed in this response.

Objection to the specification

The Examiner has objected to the specification as failing to designate American Type Culture Collection with a trademark symbol on page 14. By virtue of this response, the specification has been amended to include the trademark designation as requested by the Examiner, rendering the objection moot.

Objection to the claims

The Examiner has objected to claim 104 because this claim allegedly cannot comprise both the light and heavy chain variable region CDRs, since it is dependent on claim 98, which requires the claimed polypeptide to comprise either the light or heavy chain variable region CDRs, but not both. Although Applicants do not agree with this objection, for reasons of record in the response filed on August 11, 2003 (paper no. 39), claim 104 has been amended to independent form, rendering the objection moot.

The Office Action states that “Applicant can obviate this ground of rejection by amending claim 98 to recite, for example, “or both” before “wherein” in line 3; but it is duly noted that claim 98, insofar as the claim is drawn to a polypeptide comprising the light chain variable region containing the three complementarity determining regions (CDRs) of the monoclonal antibody 11D10 **or** the heavy chain variable region containing the three CDRs of the monoclonal antibody 11D10, would still be rejected under 35 USC. § 112, first paragraph, for the reasons set forth below.” Page 5, emphasis in original. Applicants do not understand this statement. Claim 98 is listed as “allowed” in the Office Action Summary. Further, the 35 U.S.C. §112, first paragraph, rejections “set forth below” are based on recitation of “progeny” of the 11D10-producing hybridoma. Claim 98 does not recite progeny of the hybridoma and is not listed as rejected under 35 U.S.C. §112, first paragraph in the section of the Office Action entitled “Claim Rejections - 35 USC § 112.” Applicants would appreciate clarification of the status of claim 98.

Rejections under 35 U.S.C. §112, first paragraph

Claims 1-5, 20, 23, 26-30, 33-37, 39, 40, 42, 43, 54-56, 59-65, 67-76, and 80-83 are rejected under 35 U.S.C. §112, first paragraph, as allegedly not enabled with respect to a monoclonal antibody produced by the progeny of the deposited hybridoma that produces monoclonal antibody 11D10, or the progeny itself.

Applicants respectfully traverse this rejection for reasons of record in the response filed on August 11, 2003 (paper no. 39). However, without acquiescing to the rejection and solely to expedite prosecution, Applicants have amended the claims to delete the phrase “or progeny thereof,” rendering the rejection moot.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. §112, first paragraph.

Claims 1-5, 20, 23, 26-30, 33-37, 39, 40, 42, 43, 54-56, 59-65, 67-76, and 80-83 are rejected under 35 U.S.C. §112, first paragraph, as allegedly lacking sufficient written description with respect to polypeptides comprising an immunoglobulin variable region of an antibody produced by the progeny of the deposited hybridoma that produces monoclonal antibody 11D10.

Applicants respectfully traverse this rejection for reasons of record in the response filed on August 11, 2003 (paper no. 39). However, without acquiescing to the rejection and solely to expedite prosecution, Applicants have amended the claims to delete the phrase “or progeny thereof,” rendering the rejection moot.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. §112, first paragraph.

Rejection under 35 U.S.C. §112, second paragraph

Claims 32, 78, 79, and 96 are rejected under 35 U.S.C. §112, second paragraph, as allegedly indefinite because they depend from canceled claims. The claim dependencies in claims 32, 78, and 96 have been amended to delete dependency from canceled claims, thus rendering the rejection moot.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. §112, second paragraph.

Double patenting

Claims 1-5, 20, 23, 37, 39, 40, 59, 60, 69, 70, 74, 75, 88-90, 92-94, and 97 are provisionally rejected as allegedly unpatentable over claims 52, 53, and 55 of copending U.S. Patent Application No. 10/367,506 under the judicially created doctrine of obviousness-type double patenting.

Since neither of these applications has issued as a patent, if the provisional double patenting rejection is the last remaining rejection in this case, the Examiner should withdraw the rejection in this application and let the application issue as a patent. MPEP §804.I.B. Applicants respectfully request withdrawal of the double patenting rejection upon a finding of otherwise allowable subject matter by the Examiner.

CONCLUSION

Applicants have, by way of the amendments and remarks presented herein, removed the issues for the rejections and addressed all issues that were raised in the outstanding Office Action. Accordingly, reconsideration and allowance of the pending claims are respectfully requested. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the unlikely event that the transmittal letter is separated from this document and the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 304142000321. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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